

**COURT CONSOLIDATION AGREEMENT
BY AND BETWEEN
THE CITY OF BENSON, ARIZONA
AND COCHISE COUNTY, ARIZONA**

THIS IS AN AGREEMENT, made and entered into as of the ____ day of July, 2011, by and between the County of Cochise, a body politic, [hereinafter “**COUNTY**”] and the City of Benson, a municipal corporation [hereinafter “**CITY**”] and is approved by the County Board of Supervisors, the Benson City Mayor and Council, the Presiding Judge of the Superior Court in and for Cochise County, the Cochise County Attorney, and the Justice of the Peace for Precinct 3, as authorized by the powers and authority granted by the laws of the State of Arizona.

RECITALS

WHEREAS, the **COUNTY** and the **CITY** have determined that it is mutually beneficial to consolidate the City of Benson Municipal Court with the Benson Justice Court, Precinct 3, which hereinafter will be referred to as the “Consolidated Court”; and

WHEREAS, such court consolidation provides a coordinated judicial system to provide cost effective services at a centralized location to the residents of the **CITY** and the surrounding Benson Community within Cochise County Justice Precinct Three; and

WHEREAS, the **COUNTY** and the **CITY** are authorized and empowered to enter into an Intergovernmental Agreement for this purpose pursuant to A.R.S. §§ 11-951 *et seq.*, 11-952, 22-101 *et seq.*, and 22-402,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. PURPOSE

The purpose of this Agreement is to amend the Original Agreement to further define the duties of the Parties related to operation of the Consolidated Court. This Agreement is premised on economic assumptions contained in Exhibit A, attached hereto, and is subject to annual adjustment as those numbers change and quarterly reimbursements pursuant to Sections VI.A and IV.F, as set forth below.

II. NAME AND LOCATION

The consolidation of the courts will hereinafter be known and referred to as the “**CONSOLIDATED COURT**” and will be located at the Benson Justice Court, Precinct Three, 126 West 5th Street, Benson, Arizona 85602, or other suitable location within the Benson area.

III. DUTIES OF THE COUNTY

A. The COUNTY will operate the Consolidated Court and will also be responsible for the performance of the following related functions:

1. Subject to terms of Section IV.C & D, below, all prosecution and defense of criminal cases which arise under the Arizona Revised Statutes, where the offense is committed on or after the effective date of this Agreement, and during the existence of this Agreement, so long as the County Attorney is able to staff with a qualified attorney the position designated for assignment to that court.
2. Transportation and incarceration of defendants appearing before the Consolidated Court as a result of citations issued within the CITY by the Cochise County Sheriff's Department ["CCSO"], and the Arizona Department of Public Safety ["ADPS"].
3. Service of process as required by law for parties appearing before the Consolidated Court as a result of citations or long form complaints issued by the CCSO, and ADPS.
4. Service of process as required by law for parties appearing before the Consolidated Court for all Orders of Protection, Injunctions Against Harassment and other civil matters.
5. Issuance of Search Warrants, Civil and Criminal Arrest Warrants as required or authorized by law or by Court rules for parties appearing before the Consolidated Court.

B. The COUNTY shall have jurisdiction over any pending Benson Municipal Court cases and Magistrate files and all new case filings. The COUNTY shall staff this Consolidated Court as it deems appropriate and shall have exclusive authority and control over the hiring, firing and supervision of all judicial staff.

C. The Consolidated Court shall be responsible for the collection of fees, fines, surcharges, City Code administrative fees, and disbursements to the State of Arizona, the County and/or the City of Benson, as may be required by law, the State of Arizona and the Arizona Supreme Court.

IV. DUTIES OF CITY

A. The CITY shall cause all cases which would otherwise be processed in the City Magistrate Court to be referred to and filed with the Consolidated Court, which shall assume original jurisdiction over these matters.

B. The CITY understands and agrees that, in consideration of the COUNTY'S operation of the Consolidated Court, the CITY shall be responsible for performance of the following related functions.

1. Transportation for incarceration of defendants appearing before the Consolidated Court as a result of citations issued by the City of Benson Police Department.
2. Transportation for incarceration of defendants appearing before the Consolidated Court as a result of a public offense occurring within the limits of the City of Benson.
3. Service of process as required by law for parties appearing before the Consolidated Court as a result of citations issued by the City of Benson Police Department.
4. Service of process as required by law for parties appearing before the Consolidated Court as a result of a public offense or long form complaint occurring within the limits of the City of Benson.
5. Issuing, filing, and prosecuting all City Code violations for persons appearing before the Consolidated Court. Prosecution of City Code violations will be done by the City Attorney's Office.

C. In the event that the COUNTY is unable to fulfill its obligation to provide prosecution services under Section III.A.1, above, the CITY may enter into a contract with a qualified attorney, at CITY expense, minus the cost that the COUNTY would otherwise have paid to provide services of in-house counsel, for prosecution services and associated clerical support in the Consolidated Court, subject to the concurrence of the County Attorney and provided that this attorney is properly designated as a Special Deputy County Attorney in the manner required by law. If the COUNTY is unable to fulfill its obligation under Section III.A.1 and the CITY fails for any reason to timely appoint a special deputy pursuant to terms described above, the County Attorney shall enter into a contract with a qualified attorney to provide the necessary prosecution services, subject to reimbursement by the CITY of the actual costs incurred by the COUNTY, minus the cost that the COUNTY would otherwise have paid to provide services of in-house counsel, as contemplated by assumptions contained in Exhibit A.

D. The CITY understands and agrees that, in consideration of the COUNTY's operation of the consolidated court, the COUNTY shall be entitled to any and all fines, fees or other similar revenues for civil or criminal misdemeanor cases arising within the boundaries of the Justice Court for Precinct III, after the effective date of this Agreement, which are within the jurisdiction of Justice Court Precinct or the Benson Magistrate Court, including those cases arising within the corporate limits of the City of Benson.

E. The CITY shall reimburse the COUNTY for the balance of the difference between costs and revenues for the previous calendar year, as reflected in Exhibit A. Said reimbursement shall be adjusted annually, on the anniversary of the effective date of this Agreement, as court costs and revenues change. By April 1 of each calendar year, the Cochise County Court Administration shall provide revised revenue and cost figures for the Court for the previous calendar year. By May 1 of each calendar year the COUNTY shall revise Exhibit A and the reimbursement required of the CITY under this Paragraph for the next fiscal year, starting on July 1 of that calendar year, based upon cost and revenue figures for the previous calendar year. Said revision shall be subject to approval of both the City Council and the County Board of Supervisors. The CITY shall reimburse the COUNTY on a quarterly basis.

F. The CITY shall have the sole authority to appoint the City Magistrate pursuant to A.R.S. § 8-823, *et seq.* and the Benson City Code, and to establish the compensation for the

appointee as provided for under a separate agreement. Compensation of the City Magistrate shall be the sole responsibility of the CITY.

G. The CITY shall have sole authority to renew such appointment or make a new appointment as may be required by the election of a new Justice of the Peace, applicable City Code, or the resignation of the Justice of the Peace followed by appointment of another individual, however, as a condition precedent to the COUNTY's obligation to provide services with respect to City Ordinance enforcement pursuant to this Agreement, the CITY shall:

1. Appoint the Justice of the Peace for Justice Precinct Three as Benson City Magistrate; and
2. Renew such appointment or make a new appointment in accord with Subparagraph 1, above, as required by election of a new Justice of the Peace, election of a new City Council, resignation of an incumbent Justice of the Peace followed by appointment of another individual, or otherwise.

V. INDEMNIFICATION AND INSURANCE

COUNTY agrees to hold harmless CITY, its officers, employees and agents from all losses, suits, damages or costs of any kind, including reasonable attorney's fees, defense costs and expenses arising from COUNTY'S performance pursuant to this agreement. It is understood and agreed that the COUNTY may elect to self-insure against any or all of the risks enumerated in this section. The COUNTY shall provide the CITY with current insurance certificates or the evidence of coverage as appropriate.

The CITY agrees to hold harmless the COUNTY, its officers, employees and agents from all losses, suits, damages or costs of any kind, including reasonable attorney's fees, defense costs and expense arising from the CITY'S performance pursuant to this agreement. It is understood and agreed that the CITY may elect to self-insure against any or all of the risks enumerated in this section. The CITY shall provide the COUNTY with current insurance certificates or evidence of coverage as appropriate.

VI. TERM AND TERMINATION

A. The term of this Agreement shall begin on July 1, 2011 and shall continue through June 30, 2012, provided that it shall become effective only upon filing with the Cochise County Recorder, after having been approved by the CITY and the COUNTY. Thereafter, the Agreement shall be subject to renewal and renegotiation based upon changes in costs from economic assumptions contained in Exhibit A, for successive one-year terms unless terminated as provided herein. The parties shall give each other written notice of any proposed changes in costs under this Agreement at least 90 days prior to the end of any term of this Agreement.

B. Either party may terminate this Agreement as of the end of the initial contract term or any renewal, upon written notice to the other party no less than 180 days prior to expiration of the current term

C. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are incorporated herewith by reference.

D. The parties do not anticipate any acquisition of joint property under this Agreement. In the event of termination of this Agreement, any property supplied by the CITY pursuant to this agreement shall be and remain the property of the CITY. Any property acquired through the use of JCEF funds will be handled in accordance with JCEF policies and procedures. The parties agree to the transfer of ownership of digital recording equipment and any computers or other related hardware and software supplied to the Magistrate Court by the Arizona Supreme Court to the COUNTY for utilization by the Consolidated Court for utilization by Consolidated Court personnel under terms of this Agreement, and to the return of said property to the CITY upon termination of this Agreement, unless the parties agree otherwise at that time. Any property owned or purchased by the COUNTY, which is used to provide services pursuant to this Agreement, shall be and remains property of the COUNTY.

VII. WAIVER

Waiver, or the failure of either party at any time to require performance by the other, of any provision herein, shall in no way affect the party's subsequent rights and obligations under that provision. Waiver by either party of any breach or any provision herein shall not be taken or held to be a waiver of any succeeding breach of such provision or waiver of such provision itself.

VIII. ENTIRE AGREEMENT

This written Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof, and shall supersede all previous proposals, negotiations, representations, commitments, writings, and agreements. It may not be released, discharged, changed or modified, except by an instrument in writing, signed by a duly authorized representative of each of the parties except as expressly provided otherwise in this Agreement.

IX. RIGHTS OF THE PARTIES ONLY

The terms of this Agreement are intended only to define the respective rights and obligations of the parties. Nothing expressed herein shall break any rights or duties in favor of any potential third party beneficiary or other person, agency or organization.

X. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

To the extent required by law, the parties shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 75-5 which mandated that all persons, regardless of race, religion, handicap, color, age, sex, political affiliation or national origin shall have equal access to employment opportunities.

Both parties shall comply with (1) the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap; (2) all applicable federal regulations regarding equal employment opportunity and relevant orders issued by the U.S. Secretary of Labor; and (3) all applicable provisions of the Americans Disabilities Act (Public Law 101336, 42 U.S.C. §§ 12101-12213) and all applicable Federal Regulations under the Act including 28 CFR Parts 35 & 36.

XI. APPROVAL OF THE PARTIES

Before the Agreement shall become effective and binding upon the parties, it must be approved by the COUNTY Board of Supervisors and the CITY Council, and then filed with the Cochise County Recorder. In the event that either party fails or refuses to approve this Agreement, it shall be null and void and of no effect whatsoever.

IN WITNESS WHEREOF, the **COUNTY** has caused this instrument to be executed by Chairman of its Governing Board and attested to by the Clerk of said Board; and the **CITY** has caused this Agreement to be executed by its Mayor and Council and attested to by the Clerk of said Council on the 25 day of July, 2011.

APPROVED:

COUNTY OF COCHISE:

By: _____
Pat Call
Chairman

ATTEST:

By: _____
Katie Howard, Clerk
Board of Supervisors

APPROVED:

SUPERIOR COURT IN AND FOR
THE COUNTY OF COCHISE

By: _____
Hon. Wallace R. Hoggatt
Presiding Judge

COCHISE COUNTY ATTORNEY

By: _____
Edward G. Rheinheimer
Cochise County Attorney

APPROVED:

CITY OF BENSON:

By: _____
Toney D. King, Sr.
Mayor

ATTEST:

By: _____
Vicki L. Vivian, Clerk
City of Benson

APPROVED:

JUSTICE COURT, PRECINCT 3
CITY MAGISTRATE

By: _____
Hon. Joseph Knoblock
JP/City Magistrate

INTERGOVERNMENTAL AGREEMENT DETERMINATION

RE: COURT CONSOLIDATION AGREEMENT BETWEEN THE CITY OF BENSON
AND COCHISE COUNTY

This Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned City Attorney who has determined that it is in appropriate form and is within the powers and authority granted to the City of Benson, Cochise County, Arizona.

Approved as to form this 25 day of July, 2011.

By: 

Michael J. Massee, Esq.
City Attorney

In accordance with A.R.S. § 11-952 this Agreement has been reviewed by the undersigned who has determined that this agreement is in appropriate form and within the powers and authority granted to the County of Cochise.

This _____ day of July, 2011.

By: _____

Britt Hanson, Esq.
Deputy County Attorney

Exhibit A

Economic assumptions concerning current costs and revenues of the Benson Magistrate Court under the Consolidated Justice Court:

I. Revenues

From the Court (City)	\$ 62,580
Payment Due from the City (FY 2012):	\$ 59,228
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Total Revenues -	\$121,808

II. Costs

A.	Prosecution - Credit for Prosecution provided by City at Attorney and Legal Support:	\$ (\$80,046)
B.	Defense:	\$ 8,800
C.	Jail Costs:	\$ 150,580
D.	Court Costs (staffing)	\$ 44,691
F.	Operations:	\$ 3,461
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	Summary of Total Costs:	\$ 127,486
	Overpayment FY 2011	\$ 5,679
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	Total FY 2012 Costs	\$ 121,808

(Cost estimates do not include cost for space)